MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2022/2023 (TERM ID 2210)

UIP2612 – INTELLECTUAL PROPERTY LAW

(All Sections / Groups)

09 FEBRUARY 2023
Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This question paper consists of 5 pages with 6 questions only.

3. Answer any **ONE (1)** question in **PART A** and **THREE (3)** questions only in **PART B**. Attempt **FOUR** out of **SIX** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of the following statutes into the exam venue:
   i) Copyright Act 1987
   ii) Patents Act 1983
   iii) Industrial Designs Act 1996
   iv) Geographical Indications Act 2022
   v) Trademarks Act 2019.

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

Answer any ONE question from Part A and THREE (3) questions ONLY from Part B.

PART A (25 MARKS): ANSWER ANY ONE QUESTION

QUESTION 1

The Industrial Designs Act 1996 appears to take two diverging approaches to the registrability of car parts as industrial designs. Discuss the principles governing the approaches under the Act.

(Total: 25 marks)

QUESTION 2

Explain the suitable application of the concepts of patent law in Malaysia for the following situations. Support your answers with relevant authorities:

(a) Anna recently invented a concept car dubbed, the iX Flow, an invention of colour changing cars. With a single press of a button, users can switch the colour of their car from white to black and vice versa instantly. Upon filing her invention with the Intellectual Property Corporation of Malaysia (MyIPO), she was informed that an article in Science Direct Journal on technology invention of colour changing cars had been published two years ago.

(5 marks)

(b) Sam works for BTS Sdn. Bhd. as Chief Executive Officer. One of the terms of his contract reads that Sam: "has a fiduciary duty to act in good faith, and in the best interests of BTS Sdn. Bhd." During his stint with BTS Sdn. Bhd., Sam heads the research and development department, which involved in products related to the hand socket lid. Sam secretly applied for a patent for the said invention in his own name thus claiming ownership of the invention.

(5 marks)

(c) Jamil successfully registered his product and process patent for a new medicine to cure the Coronavirus ("COVID-19"). His claimed invention reads: "A chemical composition known as Umifenovir (also known as Arbidol) could be used as a medicine to treat the COVID-19."

(5 marks)

Continued...

(d) Etika Shutters is the owner of the patented invention relating to fire shutters, which effectively resists heat transfer. The invention pertains to fire shutters, more particularly to fire shutters which effectively resist heat transfer made from a high-temperature resistant fibre glass. Without any agreement, Maju Jaya Shutters started to use, manufacture, and sell fire shutters which effectively resist heat transfer which is made from a high-temperature resistant fibre glass that is similar to Etika Shutter's invention.

(5 marks)

(e) Yaya is the owner of a patent for an omnidirectional wheel for transporting a vehicle over a travel surface. Maya is an MMU electrical engineering student who is doing her final year project on omnidirectional wheels. She tested out her research by inventing a prototype of omnidirectional wheels transporting a vehicle over a travel surface. Yaya sues Maya for patent infringement.

(5 marks)

(Total:25 marks)

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PART B (75 MARKS): ANSWER ANY THREE (3) QUESTIONS ONLY

QUESTION 3

Ali, Ah Kao and Muthu are three good friends who are musicians in a band in Malaysia. One of the songs that they have jointly composed and performed to the public in Malaysia is titled 'Kita Malaysia'. A recording of the live performance of Kita Malaysia has been uploaded by them to YouTube.

Kopi is a singer in Malaysia. She has taken the melody of the Kita Malaysia song and turned it into a Chinese love song titled 'Summer Love'. Kopi has since made numerous public performances of the Summer Love song in Malaysia.

Advise Ali, Ah Kao and Muthu on:

(1) Who is the copyright owner of the Kita Malaysia and Summer Love songs.

(15 marks)

(2) What legal action can be taken against Kopi for using their Kita Malaysia song without their permission.

(10 marks)
(Total: 25 marks)

QUESTION 4

Moe, Larry and Curly formed a partnership to start a burger restaurant called The Three Burgers. As part of the business, they have created their own unique taste and secret sauces. They have also negotiated a list of ingredient suppliers who can supply all the ingredients they need for their burger restaurant at a competitive price.

As a result of a disagreement over the direction of the business, Larry and Curly decided to dissolve the partnership and sell all their equity in the business to Moe. The dissolution agreement does not prohibit Larry and Curly from venturing into the food business in the future.

Several months after leaving The Three Burgers, Larry and Curly teamed up with a rich investor, Shemp, to start a new Western food restaurant called "Three Guys". A part of Three Guys' menu includes burgers which have similar look and taste to "The Three Burgers". Moe also came to know that some of these ingredient suppliers are also supplying to Three Guys.

Advise Moe on whether he has any legal recourse against Three Guys and its owners under the law for breach of confidence.

(Total: 25 marks)

Continued...

QUESTION 5

The company Sabah Bah Sdn. Bhd. ("SBB") produces wines in the region of Tapai, Sabah which is famous for the quality of the grapes grown there. The grapes used by SBB can only grow in Tapai's climate due to the region's specific environmental characteristics. Using three different sorts of grapes, Damit, who is the owner of SBB, created a new kind of grape which provides a similar quality but with double the production on the same surface. In the last few years, demand for Tapai wine has been growing significantly from all over Central Asia.

An association of producers in Tapai, Sabah would like to obtain exclusive rights over the name "Tapai Wine". Advise the association of producers in Tapai, Sabah on the kind of protection, if any, the association can seek for the name "Tapai Wine".

(Total: 25 marks)

QUESTION 6

Ninja Van is a highly successful company specialising in providing hassle-free delivery service for businesses of all sizes across Southeast Asia. It started its operation in 2014 and has become the region's largest and fastest growing last mile logistics company. Customers submit packages for delivery in Ninja Van's distinctive red and white box, which Ninja Van provides. The package has been used for the past 10 years. The box is shaped like a cone as this enables Ninja Van to fit the maximum number of packages into their vans. All other courier companies use rectangular or square boxes. Ninja Van had successfully registered for trademark, the name Ninja Van for "courier and mail delivery services" in 2015.

Consider the following situations which are independent of each other:

(i) Ninja Van would like to obtain trademark registrations for the shape of their boxes and their red and white colour scheme. Advise Ninja Van on whether the above shape and colour marks can be registered as a trademark under the Trademarks Act 2019.

(10 marks)

(ii) Ninja Van found out that a new courier company by the name of Minja Van was launched. Minja Van provides the same distinctive red and white cone shaped boxes for deliveries which resemble the boxes provided by Ninja Van. Minja Van has also recently started a new advertising campaign. Billboards have appeared around Malaysia bearing the words "Minja, the real Ninja". Ninja Van admits that recently there have been problems with their services.

Continued...

They lost many potential customers, and some complained to Ninja Van that they had mistakenly thought Minja Van is somewhat related to Ninja Van. Advise Ninja Van on the options under the Trademarks Act 2019 and the law of passing off.

(15 marks)

(Total: 25 marks)

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